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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Market Entry and Regulation of	)	IB Docket No. 95-22
Foreign-affiliated Entities	)	RM-8355
	)	RM-8392

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REPLY COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of its affiliated telephone operating companies, hereby submits Reply Comments to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding regarding market entry and regulation of foreign-affiliated entities.[1] GTE is affiliated with both foreign and U.S. international carriers.[2]

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1 Notice Of Proposed Rulemaking, *Market Entry and Regulation of Foreign-affiliated Entities*, IB Docket No. 95-22 RM-8355 RM-8392, FCC 95-53, released February 17, 1995.

2 GTE Corporation owns or has a controlling interest in GTE Hawaiian Tel Incorporated a U.S. international carrier, and foreign carriers, Compañia Dominicana de Teléfonos ("CODETEL"), Compañia Anónima Nacional Teléfonos de Venezuela ("CANTV") and BC Telecom Inc. and Québec - Téléphone in Canada.

DISCUSSION

I. An effective market access entry standard has the potential to thwart the Commission's goals.

One of the Commission's goals in this proceeding is to encourage foreign governments to open their communications markets. As GTE stated (at 4), the effective market access standard proposed by the Commission could unnecessarily preclude foreign carriers from entering the U.S. market and, in turn, discourage the opening of foreign markets to U.S. carriers. Although the Commission declined to propose AT&T's "mirror reciprocity" standard,[3] the six part test suggested by the Commission is almost as rigid.[4] GTE agrees with Teleglobe (at 15) that "[w]hile the Commission states that no one factor in the effective market access test would be dispositive, the combined factors clearly contemplate a regulatory structure in the foreign country that largely mimics the U.S. regulatory regime."

Other parties share GTE's concern that a non-flexible approach would deter foreign entry. This is best illustrated by the comments of foreign governments. The Secretary of Communications and Transportation of Mexico expresses concern (at 11) that this standard is "a step backward" that would

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3 NPRM at ¶41.

4 As Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD") (at 32) states: "Few, if any, countries could meet a strict application of all six parts of this [the Commission's] test."

include new criteria that could preclude entry while not increasing the certainty of acceptance. Per TLD (at 37),

> The proposed rule suffers from the same defects [as AT&T's]. It "would be impossible to meet" this ideal FCC standard. Even if the Commission intends to administer the rule in a non-protectionist fashion, it is likely to create a near-permanent bar to foreign investment in U.S. international telecommunications facilities.

The British Government (at ¶16) suggests that the market entry tests will be perceived as a closing of [US] markets "if the hurdle is set unrealistically high or causes the administrative breakdown of the authorisation procedure." Further (at ¶14), it recommends that encouraging foreign governments to open their markets "should be achieved through pursuit of trade policy . . . not through introducing reciprocity arrangements in telecommunications regulatory regimes." This opinion is echoed by other parties. Specifically, NTIA (at 14) states that "[t]he Commission's exercise of its regulatory responsibilities for oversight of telecommunications carriers under the proposed test implicates issues broader than those committed to the Commission under the Communications Act and overlaps with Executive Branch authority."[5]

Many commenters agree with GTE that this standard will not result in the opening of foreign markets. Words such as "retaliation,"[6] "backfire,"[7] and

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[5] NTIA at 14 (footnote omitted).

[6] *See* CWI at 3; NYNEX at 2; Deutsche Telekom AG at iv.

[7] *See* LDDS at 1.

"potential to create incentives for other countries to withhold access to their markets"[8] can be found throughout the comments. Commenters are concerned that the Commission's proposed standard will not encourage the opening of foreign markets, but will incent foreign governments to close them even more than they are now.[9] GTE agrees with CWI (at 4) that the Commission should exercise caution and "apply effective market access as a flexible and properly focused element of its public interest determination."

II. Resale carriers should be included in any rules adopted in this proceeding.

As GTE stated (at 6), there is potential competitive harm in continuing to permit unlimited foreign-carrier entry for switched resale. MCI (at 19) says much the same thing: "Foreign carriers operating from closed markets have a substantial capacity to engage in anticompetitive conduct in conjunction with their U.S. affiliates even if their entry into the U.S. market is only on a resale basis." As GTE illustrated, resellers have the opportunity to leverage advantages created by self-correspondence which could be significant. The situation the Dominican Republic is experiencing with resellers and call aggregators demonstrates the ability of resellers to exert tremendous influence on the market.

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8 *See* Secretary of Communications and Transportation of Mexico at 11.

9 *See, e.g.*, CWI at 3; Sprint at 20; Teleglobe at 5; fONOROLA at 5; NYNEX at 2; LDDS at 1.

AT&T (at 23) also points out the competitive impact of resellers: "[R]esale entry permits a foreign carrier with a closed home market to provide services to customers on both ends of an international route which the Commission has recognized confers an unfair advantage on the foreign carrier." Further, AT&T (*id.*), also acknowledges that "the provision of services to resellers is fiercely competitive and wholesale prices reflect that fact."

GTE urges the Commission to include resale carriers in any regulations established in this proceeding.

III. In addition to a controlling interest, a direct or indirect ownership interest in a U.S. carrier of more than ten percent should require Commission review.

GTE (at 8) supported the adoption of an affiliation standard that includes direct or indirect ownership interest of ten percent or a controlling interest at any level. Although other carriers argue for retaining only the controlling interest standard, these arguments are mainly self-serving.[10] GTE agrees with MCI (at 11-12) that "[a] foreign carrier could be induced to engage in anticompetitive conduct when its investment in a U.S. carrier is substantially lower than 25 percent because the rewards flowing from such conduct could still be substantial even at that reduced level." Other parties also support a greater than ten

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[10] *See* Sprint at 4-5, France Telecom at 4; Deutsche Telekom AG at 28-29.

percent interest for the same reasons.[11] As the Commission recognized in the NPRM (at ¶59), a precedent has been established for this level in the AT&T Consent Decree and by the Securities and Exchange Commission.

GTE strongly opposes DOMTEL's proposal (at 7-8) to exclude foreign carriers that are not dominant in their "home" market[12] from scrutiny and to treat them as non-foreign owned carriers. A foreign-owned carrier is still a foreign-owned carrier no matter what market share it possesses in the country in which it operates. DOMTEL seeks to have the Commission rewrite all the rules, including those on dominance, in order to escape Commission scrutiny. DOMTEL's less than a 45 percent market share threshold of "combined basic services" for nondominant treatment distorts the realities of the marketplace in underdeveloped foreign countries.

As the Directorate General for Posts and Telecommunications (at ¶3) states: "The structure of the telecommunications market may vary a lot from one country to another. It generally reflects the structure of the economy, and is rooted in the economic history of the country. The diversity of markets has direct implications on the regulatory environment and on the segmentation of the telecommunications market." DOMTEL's 45 percent dominance threshold ignores the fact that companies in certain environments do not have the

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11 *See* BT-North America at 8; LDDS at 7; AT&T at 25-27.

12 DOMTEL defines a "home" market as local exchange, domestic and international long distance.

economic incentive to compete for local services. This is particularly true in underdeveloped countries where local service is provided as a social obligation of the PTT and is not a profit making venture.

Therefore, GTE supports an affiliation standard that includes direct or indirect ownership interest of ten percent or a controlling interest at any level.

Respectfully submitted,

GTE Service Corporation on behalf of its affiliated telephone operating companies

By________________________

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May 12, 1995

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 12th day of May, 1995 to all parties of record.

Ann D. Berkowitz

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